



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

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DA 22-313
Released: March 23, 2022

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL
OF ENA HEALTHCARE SERVICES, LLC AND ENA SERVICES, LLC
TO ZAYO GROUP, LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-111

Comments Due: April 6, 2022
Reply Comment Due: April 13, 2022

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Commodore Intermediate Holdco, LLC (Commodore) and its indirect wholly-owned subsidiaries, ENA Healthcare Services, LLC, (ENA Healthcare) and ENA Services, LLC (ENA Services) (together, ENA Subsidiaries), and Zayo Group, LLC (ZGL or Transferee) (Commodore, ENA Subsidiaries, and ZGL, collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer indirect control of the ENA Subsidiaries to ZGL.¹

The ENA Subsidiaries are direct wholly-owned subsidiaries of Education Networks of America, Inc. (ENA and, together with the ENA Subsidiaries, ENA OpCos) and indirect wholly-owned subsidiaries of Commodore, all Delaware entities.² The ENA OpCos provide "Infrastructure-as-a-Service (IaaS) and managed communications services to K-12 schools, libraries, and rural healthcare facilities" in Arizona, Arkansas, California, Colorado, Florida, Georgia,

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application of Zayo Group, LLC and Commodore Intermediate Holdco, LLC for Consent Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Holders of Domestic Section 214 Authority to Zayo Group, LLC, WC Docket No. 22-111 (filed Mar. 7, 2022) (Application). On March 15, 2022 and March 20, 2022, Applicants filed supplements to their domestic section 214 application. Supplement to Application, WC Docket No. 22-111 (filed Mar. 15, 2022) (Supplement); Letter from Catherine Wang and Brett Ferencack, counsel to Zayo Group, LLC, to Marlene H. Dortch, Secretary, FCC (Mar. 20, 2022) (on file in WC Docket No. 22-111). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² Application at 2.

Indiana, Kansas, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and West Virginia.³

ZGL is a Delaware limited liability company and wholly-owned subsidiary of Zayo Group Holdings, Inc. (Holdings), a Delaware entity. ZGL and its operating company subsidiaries provide competitive LEC services in the District of Columbia and every state except Alaska and serve primarily carrier and enterprise customers over regional and metropolitan fiber networks.⁴ Holdings is directly wholly-owned by Front Range TopCo, Inc. (Front Range), a Delaware corporation, which is jointly controlled by EQT AB (EQT), a publicly-traded Swedish investment entity, and DigitalBridge GP, LLC (DigitalBridge), a Delaware investment entity.⁵ Front Range, through intermediate holding companies, is indirectly wholly-owned by Front Range JV, LP (JV LP), a Delaware entity.⁶ JV LP, in turn, is held by a chain of U.S. and foreign investment entities ultimately controlled by EQT and DigitalBridge.⁷ The general partner of JV LP is Front Range JV GP, LLC (JV GP), a Delaware entity.⁸ EQT and DigitalBridge each exercise approximately 45% of the control over Front Range, and thus Holdings, through the board of directors of JV GP.⁹

³ *Id.* Applicants state that, using leased facilities from other providers, including in some cases from ZGL, the ENA OpCos currently provide services primarily to school districts and libraries that participate in the Schools and Libraries (E-Rate) universal service program and rural healthcare providers that participate in the Rural Health Care (RHC) universal service program. *Id.* at 2-3, 6-7. ENA, which is also authorized to provide competitive local exchange carrier (LEC) and other communications services in South Dakota, is an indirect wholly-owned subsidiary of Commodore Holdco, LLC, a Delaware entity, which, in turn, is a direct wholly-owned subsidiary of Commodore. *Id.* at 3.

⁴ *Id.* at 2, 8-10. The operating subsidiaries, all U.S. entities, are: Indiana Fiber Network, LLC; Allstream Business US, LLC (Allstream US), which is a wholly-owned subsidiary of ZGL; and Electric Lightwave, LLC, a wholly-owned subsidiary of Allstream US. *Id.* at 10-11.

⁵ Application at Exh. A (Post-Closing Ownership Structure Chart One: Zayo Group Holdings, Inc. Structure); Supplement, Attch. 2 at 2 (Replacement Exhibit B (Ownership Structure)). DigitalBridge Group, Inc., an ultimate interest holder of the DigitalBridge Partners (DBP) entities is publicly traded with no 10% or greater interest holders. Supplement, Attch. 2 at 8. Applicants provide a narrative description and charts of each of the U.S. and foreign entities in the chain of ownership that will, post consummation, hold a 10% or greater interest in ENA OpCos, along with their respective citizenships and ownership percentages. Application at Exh. A and B (Ownership Structure); Supplement at Attch. 1 (Replacement Charts 2, 3 and 5 to Exhibit A of the Application) and Attch. 2.

⁶ Supplement, Attch 2 at 2-3. Front Range is affiliated with three incumbent local exchange carriers: Lumos Telephone of Botetourt Inc. and Lumos Telephone Inc., both operating in Virginia, and North State Telephone Company, operating in North Carolina. Application at 11-12; Supplement at 2 (amending the list of companies ZGL is affiliated with through Front Range). In addition, Front Range is affiliated with the following entities operating in North Carolina: North State Communications Long Distance, LLC, providing interexchange services, North State Communications Advanced Services, LLC, providing competitive LEC services, and North State Communications, LLC, providing cable services. Application at 11-12; Supplement at 2.

⁷ Supplement, Attch. 1 at 2 (Post-Closing Ownership Structure Chart Two: Front Range JV, LP).

⁸ Supplement, Attch. 2 at 4 and Attch. 1 at 2.

⁹ Supplement at Attch. 2 at 4. Applicants state that the board of JV GP will consist of 10 members, with four directors nominated each by EQT and DBP, one director nominated by FMR, LLC (a Delaware entity that will hold 7.6% of the equity of Holdings post-consummation), and the tenth member, an independent non-executive Chairman, chosen by consensus between DigitalBridge and EQT. For DigitalBridge and EQT, two of their respective four directors must also be independent. *Id.* at 4-5.

Pursuant to terms of the proposed transaction, ZGL will purchase from Commodore all of the issued and outstanding limited liability company interest of Holdco, and thereby ZGL will acquire indirect control of ENA and the ENA Subsidiaries.¹⁰ Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹¹ Applicants state that “ENA OpCos will have access to Zayo’s state-of-the-art fiber networks and scale, allowing ENA OpCos to reduce costs and increase efficiency. ENA OpCos also will have access to Transferee’s financial and operational expertise. This access to Zayo’s network and expertise will improve the ENA OpCos’ ability to compete in the telecommunications marketplace.”¹²

Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.¹³

Domestic Section 214 Application Filed for the Transfer of Control of
ENA Healthcare, LLC and ENA Services, LLC to Zayo Group, LLC,
WC Docket No. 22-111 (filed Mar. 7, 2022).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies.

Interested parties may file comments **on or before April 6, 2022**, and reply comments **on or before April 13, 2022**. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁴ All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

¹⁰ Application at 4.

¹¹ *Id.* at 5-7.

¹² *Id.* at 5-6.

¹³ 47 CFR § 63.03(c)(1)(v). In the *Executive Branch Review Process Order*, the Commission set out categories of applications with reportable foreign ownership that may be excluded from referral to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy issues. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10938-42, paras. 29-39 (2020) (*Executive Branch Review Process Order*). Applicants have made a showing that the Application falls into a category of exclusion from referral to the Executive Branch because it involves the transfer of control of carriers that hold only domestic section 214 authority. Application at 13-14. We are exercising our discretion and are not referring this application to the Executive Branch agencies. *See Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36, n.99; *see also id.* at 10957, para. 81, n.205.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov; and
- 2) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹⁵ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan at (202) 418-1191.

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¹⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

¹⁵ *See* 47 CFR § 1.45(c).

